

March 1, 2002

Dennis L. Keschl
Administrative Director
Maine Public Utilities Commission
242 State Street
State House Station 18
Augusta, ME 04333

Re: 10-Person Petition Concerning Casco Bay Island Transit District
Docket No. 2002-69

Dear Mr. Keschl,

Please find attached the Casco Bay Island Transit District's response in the above mentioned case.

If the Commission has further questions please contact me at 879.9414 ext. 103 or by e-mail at patc@cascobaylines.com.

Thank you for your assistance in this matter.

Sincerely,

Patrick R. Christian
General Manager

cc: Trina Bragdon

CASCO BAY ISLAND TRANSIT DISTRICT

March 1, 2002

Thomas Welch, Chairman
Maine Public Utilities Commission
242 State Street
State House Station 18
Augusta, ME 04333

Re: 10-Person Petition Concerning Casco Bay Island Transit District
Docket No. 2002-69

Dear Chairman Welch:

Thank you for providing the Board of Directors of the Casco Bay Island Transit District (the "Transit District") an opportunity to comment on the Petition recently filed with the Commission.

The entire Petition appears to be motivated by a possible increase in rates recently under consideration by the Transit District. We are pleased to announce that on February 15, 2002, the Board of Directors voted not to implement any portion of that rate increase.

BACKGROUND

The Transit District was created in response to the financial shenanigans and poor service provided in the late 1970's by the stockholders of the for-profit Casco Bay Lines, the Transit District's predecessor. The islanders responded to the resulting Casco Bay Lines bankruptcy and to the threats of rate increases and service cuts by getting legislative authority to create their own quasi-municipal entity to take over ownership and operations of the ferry service. The enabling legislation empowered the Transit District to do all things necessary to furnish waterborne transportation for public purposes in the interest of public health, safety, comfort and convenience of the islanders who require reliable, safe, adequate, year-round service to the islands. See P&S Laws, 1981, Ch. 22, Sec. 1.

The islanders' vision has been a wonderful success. Through its islander-elected Board, the Transit District responds to the needs and concerns of the islanders for safe, economical, year-round service. Elections to the Board of Directors are held annually for Board members who serve staggered three-year terms. Through their elected Board, the islanders make all policy decisions, including all schedule and rate decisions. The islanders are proud of their ferry service.

The Board of Directors of the Transit District is made up of 12 members: 10 are islanders elected by the islanders themselves; 2 are appointed, 1 each by the Maine Department of Transportation and the City of Portland. Of the 10 elected Board members, 8 are elected from specific islands on which s/he resides and 2 are elected at large. Elections are held annually in the Fall of each year in conjunction with the municipal elections for the City of Portland. The next elections will be held in November of this year. Exhibit A contains information on the current

members of the Board of Directors, the island each represents, and the term for which each is elected.

Board members are active in the affairs of the Transit District. The Board operates both collectively as an entire Board and through 5 major committees: the Executive, Finance, Rate Structure, Operations, and Governmental Relations Committees. Each Committee ranges from 4 members for the Executive Committee (all of whom are Board members) to 9 members for the Rate Structure and Operations Committees (each with 5 Board members plus 4 other islanders).

All Board and Committee meetings are noticed and open to the public. The full Board meets monthly on the 3rd Friday of each month, generally at the Transit District's terminal on the mainland. Additional meetings are held as necessary. During the summer a number of special Board meetings are held on different islands. The Executive Committee meets regularly on the first Friday of each month, more often as necessary. Each Board and Executive Committee meeting includes an opportunity for islanders to comment on any topic. The other Committees meet as necessary, especially during the Fall of each year to develop next year's schedule and budget. For example, the Rate Structure Committee recently considered whether to adjust service or rates to any of the islands and held a number of meetings for public input and discussion. The Operations Committee meets regularly to hear from the islanders as the Committee and Board work to establish and/or modify sailing schedules.

Members of the Board of Directors are always on duty. In addition to actively participating in formal Board and Committee meetings, every elected member of the Board lives on the islands at least part of the year, is known to most islanders (and to everyone on the island where that Director lives), and regularly rides the ferries. Directors find that their fellow islanders are not afraid to make their opinions known at all times.

The Transit District is not a typical for-profit utility with private stockholders who demand cash payments and a return on their investments. Stockholders controlling a for-profit utility typically have two objectives: provide a good utility service while paying themselves as much as possible. Further, the typical Maine utility is closely held with key Board and management positions held by stockholders, meaning that a portion of the stockholders' return is often achieved via excessive salaries, benefits, and perks. By contrast, the Transit District has no stockholders or stockholder-employees demanding dividends or fat salaries, benefits and perks. Rather, the owners of the Transit District are the islanders themselves. By statute, the islander representatives who run the Transit District, the Board members, receive no compensation for their services.

Further, the Transit District has no significant deregulated activities, unlike most for-profit utilities. By statute it is authorized to engage in only unregulated tour and charter service in addition to its ferry service. The Board has interpreted this tour and charter authorization narrowly: the size of the Transit District's fleet must be set exclusively to service its regular-route ferry operations: once properly sized, any excess capacity can be used for tour and charter service, both on existing runs and on new runs; prices for the Transit District's deregulated tour and charter services are set so as to maximize tour and charter revenue (and no lower than marginal cost). These longstanding guidelines were recently reviewed and confirmed by this Commission in Old Port Mariner Fleet, Inc.'s Complaint Regarding Casco Bay Island Transit District's Tour and Charter Service, Docket No. 98-161 (final Order issued 12/11/98).

Because of its quasi-municipal, non-profit structure, with ownership by the islanders themselves, none of the issues that arise in a typical utility rate case are applicable to the Transit District: return on equity and capital structure become irrelevant as there is no equity and the capital structure is 100% debt. There are no payments to affiliates and there are no issues of excessive compensation to stockholder employees.

Another major difference between the quasi-municipal Transit District and the typical for-profit utility is the absence of the stockholder pocket that can be used to pay disallowed expenses. The Transit District has no stockholders, meaning that there are no dollars going to stockholders via dividends or compensation that can be reduced or eliminated if necessary.

The Transit District must collect enough revenues each year to cover all of its expenses. When facing a revenue deficiency, the Board of the Transit District has four choices:

1. cut costs without reducing service,
2. reduce service,
3. seek other funding sources, or
4. raise rates.

The Board is continually and constantly reviewing its expenses and keeps those as low as possible. Unfortunately, the Transit District has little control over most of its cost drivers. For example, the Transit District must have vessels and liability insurance, fuel, and employees to operate the vessels, handle freight, and sell tickets. The quantities of each of these items are determined by such factors as the composition of the Transit District's fleet, the need to operate year round, the sailing schedule, and Coast Guard requirements, such that the quantities are generally beyond the Transit District's control. At most the Transit District can try to negotiate lower prices per unit, although even here the opportunity is limited. For example, all full-time employees (excluding the 3 management employees) are unionized and bargain collectively. Health insurance costs have been rising dramatically (39% this year alone). The cost of fuel is influenced by OPEC and events around the world. As a result, there are few additional cost savings to be achieved while maintaining current service levels. Overall, the Transit District's operating costs are not excessive and are under control. Aggressive paring in the past has enabled the Transit District to avoid a general increase in its winter rates since 1988¹ during a period of inflation in excess of 34%.

Service cuts were recently considered by the Board. After a lengthy public review process, with significant opposition to any service cuts, the Board decided to implement some modest service reductions, but the final reductions were much less than the total under consideration.

The Board is constantly looking for other funding sources. Whenever possible the Transit District has obtained federal grants to acquire and maintain its vessels. The Transit District annually seeks State support for its operations, especially since, by law, upon failure of the Transit District the State is obligated to take over and operate the entire service. However, the Transit District receives from the State only \$51,000/year in support for its operating expenses, or only 1.4% of its budget. Every year the Board, and especially its Governmental Relations Committee, works with the Legislature to obtain additional operating assistance to maintain reasonably priced tickets and to help ensure the continued year-round viability of the island communities. Unfortunately, various budgetary reasons have meant that the Transit District receives only this amount. By contrast, the ferry service serving Matinicus and other islands in Penobscot Bay receives an annual State operating subsidy of \$2,700,000, or 50% of its budget.

If cost savings, service reductions, and other support fail to eliminate a revenue shortfall, the only remaining alternative is a rate increase. For many years the Transit District has imposed a summer surcharge to close this revenue gap. While such summer surcharges are paid by the year-round islanders, the surcharge rates are also paid by summer island residents and by casual visitors who together far outnumber the year-round residents during the period the surcharge is in place. However, there is a limit to the size of the summer surcharge before the winter rates, which

¹ The only change in winter rates since 1988 was a one-time small adjustment to the Down Bay tickets to cover the costs of additional winter service in the evening to the Down Bay islands.

are paid by the year-round residents, must be raised along with various heavily discounted high use passes, such as the year-round monthly pass, commuter books, 50% Senior Citizen discount, etc.

RESPONSES TO PARTICULAR ALLEGATIONS OF THE PETITION

1. Rate Increase:

The introductory paragraph of the Petition refers to a proposed 4% rate increase. On February 15, 2002, the Board decided not to implement any portion of that proposed rate increase. Instead, the projected operating loss will be made up from a combination of a grant from the Federal Transit Administration through the Maine Department of Transportation and proceeds from the sale of an undeveloped lot on Peaks Island.²

2. Increase in Ridership:

The first numbered paragraph of the Petition recites statistics about the growth in the Transit District's ridership. The Transit District actually experienced a 1.6% increase in ticket sales from 2000 to 2001. No response is required to this paragraph.

3. Inconsistent Cost per Mile:

The second numbered paragraph of the Petition alleges that the Transit District's rates compute to a different charge-per-mile for service to the different islands and objects to the different frequency of service to the different islands.

In setting ticket prices, the Board attempts to be fair to all islanders while raising sufficient revenue to pay all expenses. Determining what is "fair" is subjective:

- a. "Fair" could be the same cost per ticket regardless of the distance involved, no matter how long the trip. However, the islanders on the closer, more populated islands could complain that their rates are unfair because the Down Bay islands are much further away and average fewer passengers per trip.
- b. Alternatively, "fair" could be to charge the same cost per nautical mile for each trip. However, those who live Down Bay could complain that the resulting rates to the more distant islands would be prohibitively high such that a year-round community could not survive in violation of the Transit District's legislative mandate.

Similar issues arise in setting the schedule to each island: does "fair" mean that every island receives the same number of trips per day, regardless of the number of passengers or the distance? Or does "fair" mean that schedules should be set to ensure that each boat runs with the same number of passengers on each trip (which would result in much less service than is currently provided to the less populated, more distant Down Bay islands)?

² This lot was acquired by the Transit District in 1982 along with various vessels and other assets from the predecessor ferry operator.

The current rate structure and schedule strike a balance between these extremes: the rates are higher and the trips fewer for passengers who travel Down Bay to the furthest, least populated islands, yet provide enough service to maintain every year round community at rates that are not prohibitively expensive. The current schedule and relative rate structure has been in place for decades (even under the Transit District's predecessor) and represents the long-time view of the islanders as to what is fair. In the late 1980s and early 1990s, these issues were again closely examined at the request of islanders on Peaks Island who felt that they were being charged unfairly high rates and subsidizing the service to all other islands. The resulting cost and rate structure analysis lead to a consensus that with only minor adjustments the relative service and rate and service differences between the various islands were fair.

That same detailed review lead the islanders to request an amendment to the Transit District's enabling legislation to expressly authorize cross-subsidization to ensure affordable rates and adequate service for all year-round residents so as to ensure the viability of the various island communities. This resulted in the enactment of 35-A M.R.S.A. § 5101-A(2) which states:

2. **Cross-Subsidization.** In making decisions that require an evaluation of the rates charged by the Casco Bay Island Transit District, the commission shall allow reasonable cross-subsidization of rates in order to preserve the affordability of passenger and freight services for the year round residents of the affected islands, the financial viability of the district and the viability of the island communities served by the district. In allowing such cross-subsidization, the commission shall attempt to minimize the potential need for governmental operating subsidies for the operations maintained by the district.

4. Failure to Address Personnel Complaints:

The third numbered paragraph of the Petition alleges that management "knowingly" failed to address personnel issues, thereby causing excessive legal costs to the District. This allegation is based, as the Petition itself makes clear, on reports in the press of several personnel issues that have arisen over the past two years. Having been kept informed of and monitored the facts of those matters – rather than merely one-sided and often inaccurate press coverage – the Board is aware that management has been faced with a number of highly complex conflicts involving sophisticated labor and employment law issues for which it was reasonable and necessary to retain legal assistance. Furthermore, the Board is satisfied that these matters were handled appropriately and is committed to continually advancing its processes for addressing these issues. Indeed, in the past year employees have reported a significant improvement in the working environment at the Transit District.

Because the Petition focuses on those issues that have attracted media coverage, a review of the facts giving rise to them follows.

During the three year period from 1999 through 2001, the Transit District was the subject of a total of three complaints before the Maine Human Rights Commission. These complaints, which were the first ever asserted against the District, were all interrelated. They all arose from the same factual background and were the result of a schism in the workforce at the Transit District that was caused, at least in part, by a sexual harassment complaint made in February, 1999 by Senior Captain Michael Frager against Leonard Mattos, one of the Transit District's deckhands.

Quite appropriately, immediately after receiving this complaint, management began an investigation. Because the complaint included allegations of sexual harassment – an area of

potential liability for the Transit District – as well as because it quickly became apparent that the workforce at the Transit District was deeply divided over the issue, management, again quite appropriately, involved legal counsel to assist in the investigation. At the conclusion of the investigation, management determined that there had been no sexual harassment. The Board's Personnel Committee agreed with this conclusion when it heard the decision on appeal and, subsequently, the Maine Human Rights Commission agreed as well.

In addition to resolving the complaint itself, management's investigation of the Mattos matter had another unexpected result. In particular, because of the thoroughness of the investigation, management uncovered facts indicating that Captain Frager himself had engaged in sexually harassing conduct while at work and that he had misused the complaint process and had been untruthful during the investigation. At this point, management was faced with a decision as to whether to discipline Captain Frager based on these findings. It was well aware that if it did so, he would likely grieve the decision and might also assert a discrimination claim because of the connection between his complaint and the discipline. After receiving input from the Board, management decided to take an aggressive stand and accordingly Captain Frager was suspended.

As expected, Captain Frager, through his union, grieved his suspension. Management, working with legal counsel, was able to resolve that grievance with the union, thereby forestalling arbitration. After the grievance was resolved, however, Captain Frager went to his own private attorney and filed a discrimination claim with the Maine Human Rights Commission. The Transit District then faced complaints with the Maine Human Rights Commission asserted by opposite sides of the Mattos investigation with Mattos claiming, in one complaint, that Frager's complaint against him was racially motivated and Frager claiming in another that he was wrongfully disciplined for asserting the complaint. Ultimately, the Maine Human Rights Commission agreed with management's handling of the Frager matter. The Commission never reached a conclusion on the Mattos matter because it was resolved.

Out of the fact finding process in the Mattos and Frager complaints arose a new generation of complaints. This time, one complaint was for retaliation against one Captain, Gene Willard, by another, Adam Nice, for participation in the Mattos/Frager investigation. Another, with similar allegations, was brought by Captain Willard against Captain Frager. Finally, Captain Frager claimed that Captain Willard retaliated against him. After investigating all of these complaints, the Maine Human Rights Commission sided with Captain Willard, ruling that Frager and Nice had retaliated against him. As a result of that determination, Captain Willard then made a claim of retaliation directly against the Transit District based primarily on the contention that management had not taken sufficient action to protect him from the retaliatory conduct of his co-workers. Upon the advice of management the Board ultimately decided not to object to a finding by the Maine Human Rights Commission that there were reasonable grounds to believe that retaliation took place in that case. Indeed, it chose to enter the conciliation process with Captain Willard in an attempt to make further positive changes in the workplace.

Faced with determinations from an agency of the State of Maine that two employees had violated the Maine Human Rights Act, the Transit District had to make the difficult decision as to how to respond. Firing Frager and Nice would likely trigger first grievances and then arbitration under the applicable collective bargaining agreement. Moreover, given the higher standard of proof that is generally applied in an arbitration involving a termination (clear and convincing evidence rather than the preponderance standard) there was a risk that these employees would be reinstated if terminated. Nonetheless, after reviewing the seriousness of the charges, management, with input from the Board, made the decision to terminate both Frager and Nice.

Fortunately, Frager did not resist this decision, choosing instead to resign. Nice, on the other hand, grieved the decision and then demanded arbitration. That arbitration encompassed three days. A total of 9 witnesses testified and numerous others were subpoenaed and prepared to

testify. Following briefing by both sides, the arbitrator ultimately decided that Captain Nice should be reinstated. In so doing, he made factual findings completely contrary to what the Maine Human Rights Commission had found. For example, whereas the Commission decided that Nice had uttered racial slurs, the arbitrator did not. Similarly, whereas the Commission concluded that Nice had retaliated against Captain Willard, the arbitration did not reach the same conclusion. In the Board's view, the contradictory findings of these two fact finders serves to illustrate the complexity of the situation facing management. Far from knowingly failing to take action, as the complaint in this matter alleges, management was acting with care and deliberation and with advice of counsel.

It is important to note that only a small percentage of the employment issues that management has dealt with on a daily basis have attracted the attention of the press and, consequently, the islanders filing this Petition. For many years management has dealt effectively, with little or no cost to the Transit District, on a wide range of personnel issues. In many such situations, the affected employee had the right to grieve management's decision and ultimately to proceed to arbitration, thereby costing the Transit District thousands of dollars in additional legal fees. That they did not is, in the Board's view, illustrative of management's effectiveness in dealing with these types of issues.

Moreover, despite the assumption underlying this Petition that the above described personnel issues amounted to virtually all of the legal costs incurred by the District over the past couple of years, that is not the case. In fact, the Nice arbitration was only one of two major arbitrations the District was involved in. The other involved the legal definition of probationary employees and was entirely unrelated to the personnel issues described above. In that case, the District was successful, resulting ultimately in the savings of thousands of dollars. In recent years the Transit District also successfully defended itself before this Commission a challenge by the Olde Port Mariner Fleet to the size of the Transit District's fleet and its use and pricing of excess vessel capacity. In short, legal fees are just a regular part of the cost of running a business.

It is important to note as well that the most recent series of collective bargaining negotiations between the District and its two shoreside bargaining units was conducted using a collaborative and non-adversarial bargaining process. In fact, these negotiations were conducted without the use of outside counsel and concluded in three brief sessions. Members of the Board and representatives of each bargaining unit have commented upon the successful outcome of the negotiations as well as they very positive manner in which these negotiations were conducted.

Similarly, the management team's ability to successfully address personnel related issues was also apparent in the recent re-opener in the deckhand portion of the marine bargaining unit which also was handled using very much the same process as had been the case with the other two shoreside bargaining units. Once again, these discussions were handled directly between the management team and local representatives of the bargaining unit, without any direct participation by outside counsel. This ability to work directly with Union leadership from the different bargaining units has not only saved the District money, but also enhanced the day to day working relationship between management and the employees.

In short, the Board actively oversees management in personnel issues and believes that management has not mishandled the personnel issues referred to in the Petition. Moreover, the Board believes that the legal fees incurred as a result of those issues have been both reasonable and necessary.

5. Loss of Confidence:

The fourth numbered paragraph of the Petition alleges that the Board and management have lost the confidence of the islanders. This type of generalized allegation against the elected Board members of a quasi-municipal non-profit entity should be left to all the islanders via the ballot box. Ten of the 12 Board members are elected. The Board hires the general manager. If a majority of the islanders no longer have confidence in their elected representatives, then the islanders should elect different representatives when these positions are next up for election.

SUMMARY

Many of the issues facing the Transit District are complex and frequently involve competing policies. The matters raised in the Petition are being properly attended to by the Board of Directors. The Board and its Committees are active and make all major policy decisions. All Board meetings are public. Input from islanders is obtained formally at Board and Committee meetings and informally on the islands, at the terminals, and during ferry trips.

The Officers or the Executive Committee of the Board are available to meet with the Commission at any time to discuss these issues. However, the Board does not believe that yet another public hearing will provide any meaningful information. As with any controversy with strong proponents on both sides, there will always be people who are unhappy with the outcome. The positions, views, and concerns of the islanders signing the Petition, as well as the views and concerns of all other islanders, have been fully aired, discussed, and considered by the Board which, as the elected representatives of the islanders, has the responsibility of making decisions that will benefit all islanders.

The ultimate resolution of these policy issues ultimately rests with the islanders via the ballot box. Election of Board members will be held this coming Fall, and every Fall, and each islander will have an opportunity to vote for the Board member that s/he feels will best represent her/his views. Attached as Exhibit B is a copy of a recent Press Herald editorial supporting this common sense ballot box solution.

Sincerely,

BOARD OF DIRECTORS OF THE
CASCO BAY ISLAND TRANSIT DISTRICT

Cyrus Hagge, President

Exhibit A: Information about Members of the Board of Directors of the Transit District
Exhibit B: Recent Press Herald editorial